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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,345	07/26/2004	Jcannot Hironimus	255484US6PCT	6095
22850 7590 06/28/2007 OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER KOVACS, ARPAD F	
			ART UNIT 3671	PAPER NUMBER
			NOTIFICATION DATE 06/28/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/501,345	Applicant(s) HIRONIMUS ET AL.	
	Examiner Árpád Fábán Kovács	Art Unit 3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>5/1/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Fig 1 in the reply filed on 5/11/2007 is acknowledged. The traversal is on the ground(s) as outlined on page 6 & 7.

It is noted that claim 16 is directed to the embodiment described in Fig 1, 2 ("rake"); while claim 31 is directed to the embodiment described in Fig 3, 4 ("rotatable disk").

Both of these species are examined in light of their interchangeability applicant disclosed and consequently obvious as provided in the rejection below.

Therefore, the restriction requirement has been withdrawn in re the species as shown in fig 1, 2 & fig 3, 4 and as described in the amended independent claims 16 and 31 respectively. Consequently, claims withdrawn now will be examined as well.

Claim Rejections - 35 USC § 103

2. Claims 16-35 (including the withdrawn claims) are rejected under 35 U.S.C. 103(a) as being unpatentable over Mosby (part of record, '172), in view of Aron (FR 2663189 A, cited by applicant).

Mosby discloses the claimed device of a pick up means & a guide means:

"In order to ensure that crop in the area adjacent the junction between the two headers is properly cut, guides 171 and 182 are provided at the inner corners of the headers. The guide 171 is longer than the guide 172 and projects further forwardly to overlap the guide 172. The guide 172 is mounted on a spring 173 to avoid any damage should contact between the guides occur."

and a swathing device (which is not modified when modified in view of the teachings by Aron):

"Each of the headers 11 and 12 is generally of conventional configuration including a sickle knife 17 driven by a mechanism not shown. In addition, the header includes a canvas 18 rearward of the sickle knife 17 for carrying the cut crop to an opening through which it falls to form a swath. In this case the opening indicated at 19 is arranged centrally of the swather that is at the inner end of each of the headers so that a single swath is formed centrally of the machine. In other arrangements two separate swaths can be formed by providing the opening centrally of each of the headers but this is not illustrated as it will be well within the skill of one in art."

except for providing a different guide means where the pick up means side surface closest to each other, i.e. the center line.

Aron discloses that it is known in the art to provide a number of guide means both serve the same purpose of guiding/deflecting the crop/hay into the working area of the two side headers (in case of Aron, ref 12, 13), and alternate pick up means as shown in fig 1. Although, several embodiments taught to be used for the same purpose, i.e. interchangeable guide means ref 36; but for this rejection the embodiments shown in fig 6, 7 and fig 8-10 were considered. These embodiments clearly match the embodiments applicant disclosed in fig 1, 2 and fig 3, 4 (ref 36), which incidentally uses the same reference numeral as the prior art. Finally, the pick up means known to be of the one shown in fig 1 of Aron, which inherently does not utilize a cutting blade as claimed.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the header of Mosby with the teachings of Aron, in order to pick and choose among known guide means and/or pick up means (i.e.

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the pick up means shown by Aron in fig 1, ref 36 in place of the pick up means of Mosby).

The following court excerpts further provide reasons for the above rejection:

- a. "Patent for a combination which only unites old elements with no change in their respective functions . . . obviously withdraws what is already known into the field of its monopoly and diminishes the resources available to skillful men." Great Atlantic & Pacific Tea Co. v. Supermarket Equipment Corp., 340 U. S. 147, 152 (1950).
- b. Often, it will be necessary for a court (read: patent examiners) to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue.
- c. As our (The supreme court's) precedents make clear, however, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ. (KSR v. Teleflex)
- d. a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense. (KSR v Teleflex)
- e. Finally, in Sakraida v. AG Pro, Inc., 425 U. S. 273 (1976), the Court derived from the precedents the conclusion that when a patent "simply arranges old elements with each performing the same function it had been known to perform" and yields no more than one would expect from such an arrangement, the combination is obvious. Id., at 282.
- f. Common sense teaches that familiar items may have obvious uses beyond their primary purposes, and in many cases a person of ordinary skill will be able to fit the teachings of multiple patents together like pieces of a puzzle.

Response to Arguments

3. Applicant's arguments with respect to claims 16-35 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Árpád Fábián Kovács whose telephone number is 571 272 6990. The examiner can normally be reached on Mo-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 571 272 6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Arpad F Kovacs/
Árpád Fábián Kovács
Primary Examiner
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